

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6266 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

M/s. SHREE AMBICA MINERALS

Versus

UNION OF INDIA & ORS.

Appearance:

MS KUSUM M SHAH for Petitioner
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/08/96

ORAL JUDGMENT

Heard learned counsel for the petitioner. The petitioner firm booked a wagon load consignments ex Rayal Cheruru on South Central (SC) Railway to Asarwa and Naroda via Guntakal-Raichur-Dadar. The Railway Receipts (R.R.) prepared in each consignment mentioned the route as via Guntakal-Raichur-Dadar, and freight was charged by the Railways on the basis of the fact that the consignments have to be carried through the aforesaid route. The petitioner received the consignments which

were booked from time to time and the freight was recovered by the Railway authorities at Asarva for the route mentioned in the R.R., i.e. via Guntakal-Raichur-Dadar. The details of the consignments which were actually despatched and brought to Asarva and Naroda, via Guntakal-Raichur-Dadar, i.e. the route by which the consignments were booked and indicated in R.R., have been given in annexure 'A'. A notice dated 10th November 1984, of the respondents, wherein the petitioner was directed to pay undercharge dues on the consignments of Limestone ramps and chips booked ex RLO to Asarva & Naroda. delivery of which was received by the petitioner, was issued. Under the said letter, under charges were demanded from the petitioner by the respondent due to Rationalization Scheme laid down vide General Order No.1 of 1984. Special Rates Circular No.C 432/27/6 Vol.III (Goods) of 1984 dated 4th June 1984 was placed in service for demand of undercharge dues. In exercise of the powers conferred by clause 1(b) of Section 27-A of the Indian Railways Act, 1890, the Central Government directed, under the aforesaid General Order No.1 of 1984 and the Special Rates Circular, that the Railway administration shall carry, unless it is necessary to divert such wagons for operational convenience after the consignments have been booked, any goods or class or goods by such route as specified in this Order. So far as traffic from Baroda including Gandhidham, Bhavnagar and Rajkot Divisions of Western Railway to South Central and Southern Railways is concerned, it is provided that the same may be booked and routed via Surat-Jalgaon-Manmad-Daund and vice-versa.

2. The learned counsel for the petitioner contended that the demand of undercharge dues is absolutely without any authority of law and arbitrary also. Not only this, in the case of petitioner, this demand is ex-facie illegal as in the R.R.s, the route has been indicated, and the consignments have travelled by that route and the freight has been charged as per the route indicated therein. Therefore nothing could have been demanded from the petitioner under the caption 'Undercharge Dues'.

3. The total amount demanded as undercharge dues comes to Rs.13,670/- under annexure 'A'. The respondents, though served, have not chosen to file any reply as well as to remain present at the time of hearing of this petition. In this case, Rule has been issued on 15th April 1985 and interim relief has been refused, but the Court has ordered at the same time that if the petition is allowed, then the respondent would refund the difference of the amount within two months from the date

of the order with 9% interest thereon. It has not come on record that the demand of this amount has been made after giving any notice or opportunity of hearing to the petitioner.

4. Looking to the facts of the case, I consider it to be appropriate to decide the controversy which has been raised by the petitioner in the present case. It is a case where the authority has to first decide the grievance made by the petitioner in this Special Civil Application. In this case the respondents have demanded the amount of freight charges over and above what has been demanded and paid by the petitioner for transmission of its consignments booked by it. As observed earlier, it appears that the petitioner has also not been given any notice or opportunity of hearing. The notice/letter dated 10th November 1984 also does not contain reasons for the demand of undercharge dues.

5. In the present case, interest of justice will be met in case this Special Civil Application is disposed off with direction to the respondent No.2 that the grievance made by the petitioner against the demand of undercharge dues made under the demand letter dated 10th November 1984, be considered and then only decide whether the demand can be raised. The letter dated 10th November 1984 may be considered to be a show cause notice to the petitioner. The petitioner shall file objections, if it so desires, within a period of two months from today against that demand. On receipt of the objections, the respondent No.2 shall decide the same after giving an opportunity of personal hearing to the petitioner, within a period of four months thereafter. In case the grievance of the petitioner is accepted by respondent No.2 and the demand of Rs.13,670/- is considered to be unjustified, then the aforesaid amount, if already paid by the petitioner, should be refunded back to the petitioner, within a period of two months thereafter together with interest of 9% p.a. thereon from date of payment till the date of refund thereof. Rule is made absolute as aforesaid.

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(sunil)